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SENATE

REPORT
99-26

TITLE 46, UNITED STATES CODE AMENDMENT

APRIL 10, 1985.—Ordered to be printed

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Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 597]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 597) to amend subtitle II of title 46, United States Code, "Shipping," making technical and conforming changes, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF BILL

As reported, S. 597 would make technical and conforming changes to certain provisions of title 46, United States Code. Its purpose is three-fold: First, to clarify the wage penalty provisions for coastwise commerce; second, to repeal a duplicate provision regarding the requirement for exposure suits on U.S. vessels; and third, to clarify the limited application of dangerous cargo provisions to certain fishing industry vessels.

BACKGROUND AND NEEDS

At the outset of the 99th Congress, it became apparent that several laws enacted during the 98th Congress should be clarified so as to avoid duplication or more closely reflect Congressional intent. The laws include:

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1. An act to revise, consolidate and enact certain laws related to vessels and seamen as subtitle II of title 46, United States Code, "Shipping" (Public Law 98-89—August 26, 1983).

2. The Coast Guard Authorization Act of 1984 (Public Law 98-557—October 30, 1984).

3. The act of November 8, 1984 (Public Law 98-623).

4. Commercial Fishing Industry Vessel Act (title IV of Public Law 98-364—July 17, 1984).

In the case of the act revising title 46, United States Code, it was the stated purpose of Congress to make no substantive changes of a controversial nature or changes that would be a significant change in maritime policy that would adversely affect any rights, benefits or duties of those impacted. Nonetheless, during the recent codification of title 46, a wage penalty exemption statute which had existed since 1872 (46 U.S.C. § 544) was repealed and not re-enacted. This exemption for Great Lakes voyages formed part of the basis for certain wage payment agreements negotiated through collective bargaining between U.S. vessel operators and seafaring unions. Following the exemption's inadvertent omission in 1983, lawsuits were filed on behalf of individual seamen for delayed wage payments, although the unions and carriers continued to find the negotiated wage payment procedures satisfactory. Since the rights of parties had arguably been altered by the recodification effort, the Congressional intent as expressed during consideration of the relevant legislation had not been achieved.

In the case of the Coast Guard Authorization Act of 1984 and the act of November 8, 1984, each law created substantively identical provisions of law relating to the use of exposure suits on certain vessels. Thus emerged the need to eliminate duplication, for the sake of maintaining a concise and usable United States Code.

Finally, the Commercial Fishing Industry Vessel Act permitted certain fishing industry vessels to serve as cargo carriers to serve remote Alaskan communities. Subsequently, questions were raised as to whether the Coast Guard hazardous cargo regulations applied to vessels operating under the Act's authority. Thus, there is a need to clarify the applicability of such safety regulations to these vessels.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 29, 1985.

Hon. John C. Danforth,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 597, a bill to amend subtitle II of title 46, United States Code, "Shipping," making technical and conforming changes, and

for other purposes. The bill was ordered reported by the Senate Committee on Commerce, Science, and Transportation, March 8, 1985. We expect that enactment of this bill will result in no cost to the federal government, or to state and local governments.

The bill makes technical and nonsubstantive amendments to the shipping laws in title 46. Amendments in section 1 provide for consistency in the application and use of terms. Amendments in section 2 eliminate duplicate provisions requiring use of exposure suits on vessels operating in cold water. Amendments in section 3 clarify a provision ensuring that fish processing vessels that carry flammable or combustible liquid-bulk cargo are subject to Coast Guard safety regulations.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

The bill, as reported, should have no additional regulatory impact, since it does not require that any additional regulations are to be promulgated.

PERSONS REGULATED

The bill eliminates a provision of law which duplicates, but does not increase or reduce, the statutory authority of the Coast Guard to regulate the equipping of certain commercial vessels with thermal suits. Therefore, relevant Coast Guard regulations are unaffected.

In addition, section 3 of the bill makes it clear that fish processing vessels carrying flammable or combustible liquid bulk cargo are subject to Coast Guard safety regulation. This was the original congressional intent, and conforms with, but does not expand, current Coast Guard regulatory policy.

ECONOMIC IMPACT

Since the bill requires no additional regulations to be promulgated, there should be no additional economic impact on individuals or businesses.

PERSONAL PRIVACY

There should be no impact on the personal privacy of any individual as a result of the enactment of this legislation.

ADDITIONAL PAPERWORK

No additional regulations are required to be promulgated by this legislation. Therefore, there should be no additional paperwork generated by the enactment of this bill.

SECTION-BY-SECTION ANALYSIS

Section 1

This section makes certain technical amendment to the shipping laws in subtitle II of title 46, United States Code. The amendments correct errors in the 1983 codification of these laws and provide for consistency in the application and use of terms as well as proper punctuation and grammatical construction.

In particular, subsection (a)(5) clarifies the wage penalty provisions in the U.S. shipping laws that apply to vessels engaged in the coastwise commerce. Coastwise commerce encompasses voyages of vessels from one place in the United States to another, including voyages on the Great Lakes, but not voyages from the Atlantic Coast to the Pacific Coast. As the law currently appears, section 10504 of title 46, United States Code, requires a vessel owner or master to pay a seaman two days' wages for each day payment of wages is delayed without sufficient cause after the termination of a voyage. Under prior law (former 46 U.S.C. 544), vessels engaged in coastwise commerce were exempt from this requirement. However, in the codification of the shipping laws in title 46, United States Code (Public Law 98-89), this exemption was inadvertently omitted.

The reason the wage penalty was enacted originally was to cure abuses occurring in the merchant marine where seamen were abandoned in foreign ports without their pay. Under this provision, if a seaman was not paid, the seaman would be able to receive relief under U.S. law. However, in the original law, the policy was set that this protection was not necessary for vessels engaged in commerce close along the coast of the United States. In addition, certain fishing vessels, whaling vessels, yachts, and vessels engaged on voyages between the United States and Canada, or between adjacent states, were also exempted from this penalty provision.

This section would simply restore the coastwise (including Great Lakes) commerce exemption so that the affected vessels will not have to disrupt the pay and accounting systems already in place just because of an oversight in the codification of title 46, United States Code. Currently, vessels that have traditionally enjoyed this exemption are paying their seamen in a timely fashion and are legitimate businesses which are not seeking to fraudulently deprive U.S. merchant seaman of their rightful benefits. In fact, many of the seamen employed on vessels engaged in coastwise commerce are subject to union agreements which contemplate a slight delay because they provide for the periodic payment of wages. Thus, although a seaman may not be paid upon the termination of a voyage, as the statutory penalty provision envisions, the seaman would be paid on a biweekly or monthly basis in accordance with a contract with the shipping company.

Thus, this provision in no way diminishes the protection afforded our American seamen in the past.

Section 2

This section simply eliminates a duplicate provision in the shipping laws requiring the use of exposure suits on vessels operating in cold waters. Both section 22 of the Coast Guard Authorization Act of 1984 (Public Law 98-557, 98 Stat. 2871), enacted October 30,

1984, and section 701 of the act of November 8, 1984 (Public Law 98-623, 98 Stat. 3413), enacted substantively identical section 3102 of title 46, United States Code, related to exposure suits. The purpose of this section of the bill is technical and nonsubstantive in nature. It repeals the section that became law first, and its amendments, as of the date of enactment of the section enacted afterward. A savings provision is included so that actions and references to the section to be repealed will be deemed to be applicable to the section that will remain in force. Thus, no disruption occurs in the requirement for exposure suits by law or regulations, nor is the requirement changed in any way.

Section 3

This section clarifies a provision in the shipping laws in section 403(a) of the Commercial Fishing Industry Vessel Act (Public Law 98-364, 98 Stat. 450) permitting the transportation of cargo to remote communities in Alaska by fishing industry vessels. It makes clear that fish processing vessels that carry flammable or combustible liquid bulk cargo are subject to the safety requirements in chapter 37 of title 46, United States Code. Section 3702(d) of that chapter subjects all fish processing vessels carrying this type of cargo to regulation by the Coast Guard. Thus, proper storage and transfer procedures would be required for safe operation of the vessel. Section 403(a) permits the carriage of these cargoes but was not intended to circumvent the requirements of chapter 37 of title 46, United States Code. In effect, this clarification merely ensures uniform application of the law to all fish processing vessels. This change does not alter the application of the law to the transfer of fuel or bunkers which is not regulated under chapter 37.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 46, UNITED STATES CODE

Subtitle II of that title

Subtitle II—Vessels and Seamen

* * * * * * *

PART E—[LICENSES, CERTIFICATES, AND MERCHANT MARINERS'] *MERCHANT SEAMAN LICENSES, CERTIFICATES, AND* DOCUMENTS

71. Licenses and certificates of registry 7101
73. Merchant mariners' documents 7301
75. General procedures for licensing, certification, and documentation 7501
77. Suspension and revocation 7701

* * * * * * *

Section 3305 of that subtitle

§ 3305. Scope and standards of inspection

(a) * * *

(b) If an inspection, or examination under section 3308 of this title, reveals that a life preserver, [life-saving] *lifesaving* device, or firehose is defective and incapable of being repaired, the owner or master shall destroy the [life preserver or firehose] *life preserver, lifesaving device, or firehose* in the presence of the official conducting the inspection or examination.

(c) * * *

Section 3501 of this subtitle

§ 3501. Number of passengers

(a) Each certificate of inspection issued to a vessel carrying passengers (except a ferry) [,] shall include a statement on the number of passengers that the vessel is permitted to carry.

(b) * * *

(c) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel that knowingly [violates subsection (b) of this section] *carries more passengers than the number of passengers permitted by the certificate of inspection* also shall be fined not more than $100, imprisoned for not more than 30 days, or both.

(d) * * *

Part E of that subtitle

PART E—[LICENSES, CERTIFICATES, AND MERCHANT MARINERS'] *MERCHANT SEAMEN LICENSES, CERTIFICATES, AND* DOCUMENTS

CHAPTER 71. LICENSES AND CERTIFICATES OF REGISTRY

Section
7101. Issuing and classifying licenses and certificates of registry.
7102. Citizenship.
7103. Licenses for radio officers.
7104. Certificates for medical doctors and nurses.
7105. Oaths.
7106. Duration of licenses.
7107. Duration of certificates of registry.
7108. Termination of licenses and certificates of registry.
7109. Renewal of licenses.
7110. Exhibiting licenses.
7111. Licenses for fishing vessels not subject to inspection.
7112. Licenses of masters or mates as pilots.
7113. Exemption from draft.
7114. Fees.

Section 7501 of that subtitle

§ 7501. Duplicates

(a) If a license, [certificate, or document] *certificate of registry, or merchant mariner's document* issued under this part is lost as a result of a marine casualty, the holder shall be supplied with a duplicate without cost.

(b) * * *

Section 7503 of that subtitle

§ 7503. Dangerous drugs as grounds for denial

(a) * * *

(b) A license, [certificate, or document] *certificate of registry, or merchant mariner's document* authorized to be issued under this part may be denied to an individual who—

(1) within 10 years before applying for the license, certificate, or document, has been convicted of violating a dangerous drug law of the United States or of a State; or

(2) when applying, has ever been a user of, or addicted to, a dangerous drug unless the individual provides satisfactory proof that the individual is cured.

Section 7702 of that subtitle

§ 7702. Administrative procedure

(a) Sections 551–559 of title 5 apply to each hearing under this chapter about suspending or revoking a license, certificate of registry, or merchant [mariners'] *mariner's* document.

(b) * * *

Section 7703 of that subtitle

§ 7703. Bases for suspension or revocation

A license, [certificate,] *certificate of registry,* or merchant mariner's document issued by the Secretary may be suspended or revoked if, when acting under the authority of that license, certificate, or document, the holder—

(1) has violated or failed to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters.

(2) has committed an act of incompetence, misconduct, or negligence.

Section 7704 of that subtitle

§ 7704. Dangerous drugs as grounds for revocation

(a) * * *

(b) If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or [document] *merchant mariner's document* issued under this part within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be revoked.

(c) If it is shown that a holder has been a user of, or addicted to, a dangerous drug, the license, [certificate, or document] *certificate of registry, or merchant mariner's document* shall be revoked unless the holder provides satisfactory proof that the holder is cured.

Section 7705 of that subtitle

§ 7705. Subpenas and oaths

(a) An official designated to investigate or preside at a hearing on matters that are grounds for suspension or revocation of licenses, [certificates, and documents] *certificates of registry, and merchant mariner's documents* may administer oaths and issue subpenas to compel the attendance and testimony of witnesses and the production of records or other evidence during investigations and at hearings.

(b) * * *

Section 8302 of that subtitle

§ 8302. Staff department

(a) * * *

(b) The staff department on a vessel is a separate and independent department. It consists of individuals registered under section 7101 of this title, [clerks] *clerks,* and individuals assigned to the senior registered medical doctor.

(c)–(h) * * *

Section 10504 of that subtitle

§10504. Wages

(a)–(c) * * *

[(d) Subsections (b) of this section do not apply to a fishing or whaling vessel or a yacht. However, subsections (b) and (c) apply to a vessel taking oysters.]

(d) Subsections (b) and (c) of this section do not apply to:

(1) a vessel engaged in coastwise commerce,

(2) a yacht,

(3) a fishing vessel (except a vessel taking oysters),

(4) a whaling vessel.

(e) * * *

Section 11101 of that subtitle

§11101. Accommodations for seamen

(a)–(c) * * *

(d) A merchant vessel of the United States, the construction of which began after March 4, 1915, having more than 10 seamen on deck, shall have at least one [light] *lighted* clean, and properly heated and ventilated washing place. There shall be provided at least one washing outfit for each 2 seamen of the watch. A separate washing place shall be provided for the fireroom and engineroom seamen, if their number is more than 10, that shall be large enough to accommodate at least one-sixth of them at the same time, and have a hot and cold water supply and a sufficient number of washbasins, sinks, and shower baths.

(e)–(f) * * *

Chapter 121 of that subtitle

PART H—IDENTIFICATION OF VESSELS

CHAPTER 121. DOCUMENTATION OF VESSELS

Section
12101. Related terms in other laws.
12102. Vessels eligible for documentation.
12103. Certificates of documentation.
12104. Effect of documentation.
12105. Registry.
12106. Coastwise licenses and registry.
12107. Great Lakes licenses and registry.
12108. Fishery licenses and registry.
[12109. Pleasure vessel licenses.] *Recreational vessel licenses.*
12110. Limitations on operations authorized by certificates.
12111. Invalidation of certificates of documentation.
12112. Vessels procured outside the United States.
12113. Ports of documentation.
12114. Home ports.
12115. Names of vessels.
12116. Numbers, signal letters, and identification markings.
12117. Recording of United States built vessels.
12118. Registration of funnel marks and house flags.
12119. List of documented vessels.
12120. Reports.
12121. Regulations.
12122. Penalties.

Section 12101 of that subtitle

§ 12101. Related terms in other laws

When used in a law, regulation, document, ruling, or other official act referring to the documentation of a vessel—

(1)–(4) * * *

(5) "yacht" means a [pleasure] *recreational* vessel even if not documented.

Section 12104 of that subtitle

§ 12104. Effect of documentation

A certificate of documentation is—

(1) conclusive evidence of nationality for international purposes, but not in a proceeding conducted under the laws of the United States;

(2) except for a [pleasure] *recreational* vessel license, conclusive evidence of qualification to be employed in a specified trade; and

(3) not conclusive evidence of ownership in a proceeding in which ownership is in issue.

Section 12109 of that subtitle

§ 12109. [Pleasure] *Recreational* vessel licenses

(a) A [pleasure vessel] *recreational vessel* license may be issued for a vessel that is—

(1) eligible for documentation; and

(2) to be operated only for pleasure.

(b) A licensed [pleasure vessel] *recreational vessel* may proceed between a port of the United States and a port of a foreign country without entering or clearing with the Customs Service.

(c) The Secretary may prescribe by regulation reasonable fees for issuing, renewing, or replacing a [pleasure vessel] *recreational vessel* license, or for providing any other service related to a pleasure vessel license. The fees shall be based on the costs of the service provided.

Section 12110 of that subtitle

§ 12110. Limitations on operations authorized by certificates

(a) A vessel may not be employed in a trade except a trade covered by the certificate of documentation issued for that vessel. A [documented pleasure] *documented recreational* vessel may be operated only for pleasure. However, a certificate of documentation may be exchanged, under regulations prescribed by the Secretary, for another type of certificate of documentation or endorsed appropriately for a trade for which the vessel qualifies.

(b) * * *

(c) When a vessel is employed in a trade not covered by the certificate of documentation issued for that vessel, or a [documented pleasure] *documented recreational* vessel is operated except for pleasure, the vessel and its equipment are liable to seizure by and forfeiture to the United States Government.

(d) * * *

Section 12114 of that subtitle

§ 12114. Home ports

(a) The port [of documentation] selected by an owner of a vessel and approved by the Secretary for the documentation of the vessel is the vessel's home port.

(b) * * *

THE COMMERCIAL FISHING INDUSTRY VESSEL ACT

Section 403 of that Act

SEC. 403. (a) [Before] *Except as provided in chapter 37 of title 46, United States Code, and before* January 1, 1990, a fishing, fish processing, or fish tender vessel, that is (1) not more than 500 gross tons and (2) in operation, or contracted for purchase to be used as a vessel of this type, before July 1, 1984, may transport cargo to or from a place in Alaska not receiving weekly transportation service from a port of the United States by an established water common carrier, except that the service limitation does not apply to transporting cargo of a type not accepted by that carrier.

(b)–(c) * * *

THE COAST GUARD AUTHORIZATION ACT OF 1984

Section 22 of that Act

[EXPOSURE SUITS

[SEC. 22. (a)(1) Chapter 31 of title 46, United States Code, is amended by adding at the end thereof the following:

["§ 3102. Exposure suits

["(a) The Secretary shall by regulation require exposure suits on vessels designated by the Secretary that operate in the Atlantic Ocean north of thirty-two degrees North latitude or south of thirty-two degrees South latitude and in all other waters north of thirty-five degrees North latitude or south of thirty-five degrees South latitude. The Secretary may not exclude a vessel from designation under this section only because that vessel carries other lifesaving equipment.

["(b) The Secretary shall establish standards for an exposure suit required by this section, including standards to guarantee adequate thermal protection, buoyance, and flotation stability.

["(c)(1) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel violating this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

["(2) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel violating this section or a regulation prescribed under this section may be fined not more than $25,000, imprisoned for not more than 5 years, or both.".

[(2) The analysis of chapter 31 of title 46, United States Code, is amended by inserting immediately after the item relating to section 3101 the following:

"3102. Exposure suits.".

[(b) Section 3102 of title 46, United States Code (as added by subsection (a) of this section), does not limit the authority of the Secretary of the department in which the Coast Guard is operating to prescribe regulations requiring exposure suits on vessels not required by section 3102 to have exposure suits.

[(c) The regulations prescribed under section 3102 of title 46, United States Code (as added by subsection (a) of this section), shall be effective not later than 60 days after the date of enactment of this Act.

[(d) Not later than six months after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall submit a report to the Congress evaluating the benefits and disadvantages of extending the regulations prescribed under section 3102 of title 46, United States Code (as added by subsection (a) of this section) to require exposure suits on designated vessels operating in all waters north of thirty-one degrees North latitude or south of thirty-one degrees South latitude.]

○